

RAMONA L. RANDA

IBLA 92-436 Decided January 21, 1993

Appeal from a decision of the California State Office, Bureau of Land Management, rejecting Indian allotment application CACA-29498.

Affirmed.

1. Act of Feb. 8, 1887--Indians: Lands: Allotments on Public Domain:
 Generally

BLM properly rejected an application under sec. 4 of the Indian General Allotment Act, as amended, 25 U.S.C. § 334 (1988), for an Indian allotment when the applicant failed to provide, either with her application or in response to a BLM decision requiring her to do so, a certificate of eligibility showing that she is or is entitled to be a recognized member of a Federally-recognized Indian tribe.

APPEARANCES: Ramona L. Randa, Redding, California, pro se.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Ramona L. Randa has appealed from a decision of the California State Office, Bureau of Land Management (BLM), dated April 16, 1992, rejecting her application for an Indian allotment, CACA-29498. On November 4, 1991, she filed an application for an Indian allotment for 160 acres of land described as the S½ SE¼ NW¼, E½ SW¼, S½ NW¼ SW¼, SW¼ SW¼ sec. 15, T. 32 N., R. 5 W., Mount Diablo Meridian, Shasta County, California. ^{1/} The application was filed pursuant to section 4 of the Act of February 8, 1887 (Indian General Allotment Act), as amended, 25 U.S.C. § 334 (1988). Attached to the application was a petition by Randa seeking classification of the land as suitable for allotment under the Act.

Accompanying the allotment application and petition was an April 29, 1969, statement signed by the Area Director, Sacramento Area Office, Bureau of Indian Affairs (BIA). The statement recited that "Ramona Johnson Randa" was the granddaughter of Dauphin Riley, who was a "California Indian" and

^{1/} On Jan. 25, 1991, BLM published Notice of Realty Action (CA-27703) determining that the land later sought by Randa was "suitable for disposal by exchange" under section 206 of the Federal Land Policy and Management Act of 1976, as amended, 43 U.S.C. § 1716 (1988). 56 FR 2935 (Jan. 25, 1991).

that she was "enrolled as California Roll No. 41856, Revised No. 27423" and eligible to receive an allotment under section 4 of the Indian General Allotment Act. The application stated that Randa was a member of the Winnemem "Wintu" Indian tribe.

By letter dated February 3, 1992, BLM notified Randa that her certificate of eligibility was not acceptable "because it is not current" and that therefore her application was incomplete. BLM required Randa to submit a "current certificate" within 30 days of receipt of the letter or the application would be rejected. On February 26, 1992, Randa requested an extension of time to respond. By letter sent on February 27, 1992, BLM allowed her a 30-day extension of time. BLM confirmed by phone on April 1, 1992, that she had received the letter.

The record indicates that, while she asserted that the April 1969 certificate was adequate, Randa asked BIA to provide her with a current certificate of eligibility by letter dated February 27, 1992. In this letter, she stated that BIA was in possession of a letter from the Wintu Tribe "attesting to my status as a member of the Wintu Tribe." The record contains a copy of a February 14, 1992, letter from the Chairwoman, Wintu Tribe of Shasta, "certify[ing]" that Ramona Johnson Randa is a "member, in good standing, with the Wintu Tribe of Shasta."

By letter dated March 13, 1992, the Acting Area Director, Sacramento Area Office, BIA, responded to Randa that it was not yet established that she was either a recognized member of a Federally-recognized Indian tribe or someone entitled to be so recognized, and thus qualified for an Indian allotment under 43 CFR 2531.1(a). That regulation requires an applicant for an Indian allotment

to show that he is a recognized member of an Indian tribe or is entitled to be so recognized. Such qualifications may be shown by the laws and usages of the tribe. The mere fact, however, that an Indian is a descendant of one whose name was at one time borne upon the rolls and who was recognized as a member of the tribe does not of itself make such Indian a member of the tribe. The possession of Indian blood, not accompanied by tribal affiliation or relationship, does not entitle a person to an allotment on the public domain. Tribal membership, even though once existing and recognized, may be abandoned.

The Acting Area Director explained that it was not sufficient that Randa claimed to have Indian blood, since there was no demonstrated membership or an entitlement to membership in a Federally-recognized Indian tribe. He stated that the Wintu Tribe was "not at this time a [F]ederally-recognized tribe" but that there were several California reservations or rancherias "whose members include individuals with Wintun blood," thus suggesting that Randa might establish her membership in those Indian tribes. He also observed that Randa claimed to be the descendant of Dauphin Riley, who according to BIA records "possessed 1/2 degree Wintu (Wintun) Indian blood," and that this claimed relationship was the basis for Randa's inclusion on the "1972 California Judgment Roll and * * * the 1950 Revised Roll."

However, he stated that this was not sufficient proof of tribal membership or proof that she was a member of a Federally-recognized Indian tribe. In these circumstances, he concluded that the April 1969 certificate of eligibility may have been issued in error. He informed Randa that she could seek issuance of a new certificate of eligibility by providing evidence that she is "currently an enrolled/recognized member of a [F]ederally-recognized tribal entity."

The April 1992 BLM decision rejected Randa's Indian allotment application because the application had not been accompanied by a proper certificate of eligibility, as required by 43 CFR 2531.1, and she had failed to provide one timely. BLM found that, while the record indicated that Randa might be a member of the "Wintu Tribe," it was not a Federally recognized tribe. Her application was rejected "without prejudice," meaning that she had the right to file a new application "provided it is accompanied by a proper certificate of eligibility." Randa appealed from that decision.

She now contends that she has already provided BLM with a proper certificate of eligibility under 43 CFR 2531.1, since the regulation does not require that an applicant demonstrate she is a member of a Federally-recognized Indian tribe and that, in any case, the Wintu Tribe was Federally-recognized when the 1969 certificate of eligibility was issued. Randa concludes that BLM has violated her constitutional rights by rejecting a "property right," without affording her due process of law.

[1] Section 4 of the Indian General Allotment Act provides in relevant part that "any Indian" for whose tribe no reservation has been provided and who makes settlement on public domain land and applies therefor is entitled to an allotment of such land. 25 U.S.C. § 334 (1988). The statute goes no further in terms of defining who will be considered an "Indian," which may be the subject of some dispute. See Keith v. United States, 58 P. 507 (Okla. 1899). Departmental regulations implementing the Act require an applicant for an Indian allotment to show that she "is a recognized member of an Indian tribe or is entitled to be so recognized." 43 CFR 2531.1(a) (emphasis added); see Instructions, 35 L.D. 549, 550 (1907); Albert A. Coursolle, 44 L.D. 188, 192 (1915) ("[n]ot every person possessing a degree of Indian blood * * *, but without tribal affiliation or relationship, is entitled to the benefits of the fourth section"). This is accomplished by submitting with her allotment application a "certificate showing that * * * she is an Indian and eligible for such allotment." 43 CFR 2531.1(b); see Regulations, 46 L.D. 344, 345 (1918). In this way, the applicant may demonstrate that she is an "Indian" within the meaning of 25 U.S.C. § 334 (1988). See Witt v. United States, 681 F.2d 1144, 1147 (9th Cir. 1982); Wanda Lois Lee McKinney, 53 IBLA 279, 286-87 (1981).

Departmental regulations at 25 CFR Part 83 set forth the policy and procedure by which the Department recognizes the existence of Indian tribes where such recognition is a "prerequisite to the * * * benefits from the Federal Government available to Indian tribes." 25 CFR 83.2; see Interim Ad Hoc Committee of the Karok Tribe v. Area Director, Sacramento Area Office, Bureau of Indian Affairs, 13 IBIA 76, 87, 92 I.D. 46, 53 (1985).

A list of tribes recognized by the Department is published in the Federal

Register. 25 CFR 83.6(b). While we are not concerned here with benefits flowing directly to a tribe, we are concerned with derivative benefits available to an individual Indian as a member of a tribe under the Indian General Allotment Act. The Department has held that, in similar circumstances, the "regulations at 25 CFR Part 83 are binding on the Department * * * as to which Indian entities may be considered Indian tribes under * * * regulations which do not define the term 'Indian tribe.'" Edwards v. Acting Phoenix Area Director, 18 IBIA 454, 457 (1990); see also Northwest Computer Supply v. Acting Deputy to the Assistant Secretary - Indian Affairs (Operations), 16 IBIA 125, 129-30 (1988); Indian Tribal Status Under the Bald Eagle Protection Act, Solicitor's Opinion, 88 I.D. 338, 340 (1981). Accordingly, only those tribes recognized by the Department under 25 CFR Part 83 and listed in the Federal Register are properly considered an Indian tribe under regulations that do not define that term.

Because the regulations at 43 CFR Part 2530 do not define the term "Indian tribe" used in 43 CFR 2531.1(a), we hold that the regulations at 25 CFR Part 83 are controlling. We therefore conclude that an individual Indian is not entitled to an Indian allotment as a recognized member of an Indian tribe within the meaning of 43 CFR 2531.1(a), unless she is able to demonstrate that her tribe is Federally recognized under 25 CFR Part 83. Randa was therefore required to demonstrate that the Wintu Tribe was a Federally recognized tribe in order to be entitled to the benefits of the Indian General Allotment Act.

Randa failed to demonstrate, at the time of making application or thereafter, that she was a member of a Federally-recognized Indian tribe. Her application shows that she was relying on her membership in the Wintu Tribe. Yet BIA notified her by letter dated March 13, 1992, that the Wintu tribe was not then Federally recognized. This was true at the time she made application in November 1991 and thereafter. See 44 FR 7235 (Feb. 6, 1979); 53 FR 52829 (Dec. 29, 1988). There is no evidence that she later attempted to establish her membership in a Federally recognized tribe despite the indication by BIA that she might be able to do so. 2/ Nor has she ever submitted a new certificate of eligibility demonstrating her membership in a Federally-recognized Indian tribe.

Because the regulation requires that the applicant demonstrate that she "is" eligible, we conclude that she must establish her eligibility at the time of application. 43 CFR 2531.1. The regulation provides that a person "desiring to file application for an allotment * * * must first obtain from the Commissioner of Indian Affairs a certificate [of eligibility]." 43 CFR 2531.1(b). Further, the necessity for establishing tribal membership at the time of application is evident in 43 CFR

2/ There are at least four Federally-recognized Indian tribes in California with Wintu Indian members: Cachil DeHe Band of Wintun Indians of the Colusa Indian Community of the Colusa Rancheria, Cortina Indian Rancheria of Wintun Indians, Grindstone Indian Rancheria of Wintun-Wailaki Indians, and Rumsey Indian Rancheria of Wintun Indians. See 53 FR 52830, 52831 (Dec. 29, 1988).

2531.1(a), which observes that such membership, though once extant, may have been "abandoned." See also Louis W. Breuninger, 42 L.D. 489, 491 (1913) ("[t]here are many thousands of Indian descent living among the people of the United States who have wholly lost or abandoned their tribal relation and are no longer recognized by the Indian nation as a member of it"). It is clear that the applicant will not ultimately be entitled to

an allotment unless she is an "Indian," as defined by the Department, at the time an allotment is to be issued under 25 U.S.C. § 334 (1988). She must therefore demonstrate at the time her application is filed that she

is (or is entitled to be) a recognized member of an Indian tribe. She failed to provide a current certificate despite the requirement by BLM

that she do so. Because she must show she is a member of a Federally-recognized Indian tribe when applying for an allotment, we find that BLM properly rejected her Indian allotment application. See Howard M. Smithson, 70 IBLA 126 (1983), and cases cited therein.

Other arguments raised by Randa have been considered and rejected. Her argument that BLM rejected her certificate because it did not bear a BIA serial number cannot be reached because BLM did not reject her application for that stated reason. Similarly, the claimed denial of her constitutional right to due process of law is without merit because it is clear that Randa has no vested right to an allotment under section 4 of

the Indian General Allotment Act by virtue of her application alone. See Finch v. United States, 387 F.2d 13, 15-16 (10th Cir. 1967), cert. denied, 390 U.S. 1012 (1968); Ellis Eugene Hardcastle, 74 IBLA 20, 22 (1983);

Clark v. Benally (On Rehearing), 51 L.D. 98, 101 (1925); Martha Head, 48 L.D. 567, 571 (1922). Her appeal to this Board has provided the procedural due process to which she is entitled under the circumstances of this appeal. See Clarence Lockwood, 95 IBLA 261, 266 (1987), rev'd on other grounds, Degnan v. Hodel, No. A87-252 (D. Alaska Feb. 16, 1989). Rejection of her application does not affect whatever rights she may have to an allotment under the Indian General Allotment Act. She is free to file another Indian allotment application supported by a proper certificate of eligibility.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Franklin D. Arness
Administrative Judge

I concur:

Will A. Irwin
Administrative Judge

